# Law, Literature and Symbolic Revolution: *Bleak House*

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In 1988 the House of Lords decided an appeal case entitled *City of London Building Society v. Flegg*, in which a Mr and Mrs Flegg had bought a house for their daughter and son-in-law, Mr and Mrs Maxwell-Brown. All four lived in the property. However, the younger couple mortgaged it without notifying the others. The Fleggs then sued the building society, seeking recognition of their equitable interest. The property was named "Bleak House," and fittingly the trial and two appeals involved a veritable "fog" of legal technicality (Warrington). The name of this house provides evidence for the cultural power of Dickens's novel. The nature and extent of that power in the field of the law is the subject of this essay.

Law and literature are both social institutions that structure reality through language (Weisberg and Barricelli 150). One writer who has examined this structuring in both fields is the sociologist Pierre Bourdieu. Bourdieu uses the term "field" in a scientific sense, as a force field, as "a method of representing the way in which bodies are able to influence each other" (Beer x). In the course of analysing "the juridical field" Bourdieu describes the power of the law in linguistic terms: "Law is the quintessential form of the symbolic power of naming that creates the thing named, and creates social groups in particular. It confers upon the reality which arises from its classificatory operations the maximum permanence that any social entity has the power to confer upon another, the permanence we attribute to objects" (Bourdieu, "Force," 838). A clear example of the law's power to create a new social group by inventing a new name is that of "pensioner," a new social identity brought into being in Britain by the *Old Age Pensions Act* of 1908. According to Bourdieu's translator, Richard Terdiman, language is integral to "the entire practical activity of 'worldmaking' (marriages, divorces, substitutions, associations, dissolutions)" that makes up everyday work in and under the law (Terdiman 805).

Dickens provides a critical example of how legal categories construct identity and subjectivity early in *Bleak House* when he has the lawyer Conversation Kenge inform Esther Summerson that she was "in fact though not in law" related to Miss Barbary (33). Shame as well as property disqualification attached to illegitimacy. Miss Barbary's belief in this legally-entrenched ideology led her to cut all ties with her family, to suppress the fact that she was Esther's Aunt, and to punish the child for the sins of her parents. This legal penalty is put into practice in the emotional deprivation of Esther's childhood. Jenny Bourne Taylor has noted that in the years following the new Poor Law, illegitimacy became a site of intense policy debate and social concern: "the shame of illegitimacy is internalised to a greater degree, as the illegitimate child is doubly perceived as bearing and being the mother's 'mark of shame'" (Taylor 126). It is appropriate that, when informed of her legal non-identity, Esther describes herself as a "destitute subject." Taylor is right to argue that "Esther's illegitimacy becomes a means of exploring femininity at the edge of law, with no identity within it, yet no standpoint to speak outside it" (Taylor 138).

Dickens seeks through Esther's narrative to contest this ideology, eventually posing the question, "'what is the true legitimacy'?"(965). In this and many other

examples, especially the drawn-out case of *Jarndyce v. Jarndyce*, the novel mounts a sustained critique of the law, its language, its practitioners and procedures. Dickens satirises the symbolic forms of the English legal and political order, undercutting their authority through travesty and through the creation of an ethical counterworld, the latter by introducing a second, alternative narrator, Esther (Raffield; Quiring). As a result, *Bleak House* is concerned to reveal the law's linguistic creativity as damaging to individuals and as class-biased. A good illustration of this occurs when Jo the crossing sweeper is ordered by the police in chapter 19 to "move on." The Metropolitan Police Act of 1829, which brought the modern police force into being, and which therefore counts as one of the most important pieces of legal naming in the nineteenth century, invested police with the power to order vagrants and the homeless to "move on." Dickens seizes on this legal speech-act, first by having Jo question, "'where can I move to!'" and when the constable replies, "'My instructions don't go to that,'" by having the narrator dilate upon this senseless formalism by criticising the legislators: "the great lights of the parliamentary sky have failed for some few years ... to set you the example of moving on. The one grand recipe remains for you - ... the be-all and end-all of your strange existence upon earth. Move on!" (308). Not only is the law attacked on practical and ethical grounds, but through the plot, the harrying of Jo is shown to be politically motivated. The moving on of Jo occurs at the behest of Tulkinghorn, and Inspector Bucket, an otherwise heroic figure in the novel, obliges in this exercise of police power for what is a partisan interest.

These criticisms of the law are made from within the field of literature, taking advantage of the relative autonomy of "the field of cultural production" (Bourdieu, *Field*). Whilst decidedly rejecting Romantic notions of the writer as individual genius, Bourdieu draws from the examples of Flaubert and Manet the recognition that writers and artists may exercise "the properly symbolic power of ... revealing in an explicit, objectified way the more or less confused, vague, unformulated, even unformulable experiences of the natural world and the social world, and bringing them into existence" (Bourdieu, "Intellectual," 146). Within this field the artist as creator may effect a "symbolic revolution," offering "new categories of perception and evaluation of the world" (149). In this materialist theory, a symbolic revolution is not achieved simply at the level of textual content or form, but necessitates a remaking of the literary field itself. Several Dickens critics of the early to mid-twentieth century, among them George Bernard Shaw and Edgar Johnson, have interpreted the Spontaneous Combustion that kills Krook in *Bleak House* as portending through symbol the revolutionary destruction of the social order. This allegorical reading is encouraged by the narrator: "the Lord Chancellor of that court, true to his title in his last act, has died the death of all Lord Chancellors in all Courts, and of all authorities ... where injustice is done" (519). Krook's combustion is a warning about the effect of corruption in a sclerotic body politic. The disquiet that this image caused to advocates of realism, like George Henry Lewes, who objected that Spontaneous Combustion was unscientific, suggests that Dickens's work was threatening the emergent realist aesthetic (Ashton 13-15, 61-67). Dickens's insistence on the reality of Spontaneous Combustion, which some have seen as a weak defence, may be understood in terms of the politics of the literary field, as an assertion of the authority of his own hybrid theory of literature and his own reformist vision of society.

I wish to argue that the novel does attempt a symbolic revolution in this larger sense. *Bleak House* does critique alternative versions of literature and art, notably romantic and aristocratic ones. In chapter 37, Harold Skimpole constructs Richard Carstone as a pastoral shepherd in the Inns of Court, "full of the brightest vision of the future which he evokes out of the darkness of Chancery" (593). Skimpole's imaginative frolic is set against a more utilitarian approach to Chancery, one which asks, "What's the use of these legal and equitable abuses? How do you defend them?" If Skimpole is a fictional caricature of the Romantic essayist Leigh Hunt, then his fantastic idealisation of the Courts recalls another Romantic text about legal London, Charles Lamb's essay, "The Old Benchers of the Inner Temple" (Shatto 68ff). Lamb's nostalgic recollection of his childhood home in the Inns of Court is coupled with a defence of the ethos and culture of the lawyers. Skimpole's effusion is a parody of an approach to literary practice as well as to a way of memorialising the law. In chapter 12, Dickens personifies "the Fine Arts, attending in powder and walking backwards like the Lord Chamberlain," deferring to the tastes and values of their aristocratic patrons. Subservient to their powerful audience, such arts "must be particularly careful not to be in earnest or to receive any impress from the moving age" (189). This quotation from a chapter on the social groups that meet at Chesney Wold recognises the arts as a field or institution in society, and registers its political relation to the dominant class. It critiques the traditionalism and implicit conservatism of this art world. Dickens's own practice is the opposite of this: seriously engaging with urgent public questions; full of echoes of or allusions to events and celebrities of the day; and above all bearing "the impress of the moving age" through its capacious imitation of the voices and discourses of various social groups. The symbolic form he proposes brings into view the lives of those denied legal identity or a legal voice. Through such representations of literature, art and law, *Bleak House* is attempting a symbolic revolution.

The interest of this theory lies in the fact that both law and literature are sites of transformation through language. Symbolic revolution may occur in the law, as for example in the recognition of native title, or in the investiture of new forms of police power under the 1829 Act. The critic Barbara Leckie has analysed Bourdieu's writings on the two fields, and she concludes that "symbolic revolution then forms the link between law and literature" (Leckie 131). For scholars studying legal change in Victorian England, Leckie is helpful in drawing attention to Bourdieu's insistence that symbolic transformation in the law follows change in other discourses or fields: "It would not be excessive to say that [law] *creates* the social world, but only if we remember that it is this world which first creates the law" (Bourdieu, "Force," 839). John Butt and Kathleen Tillotson's pioneering research on "*Bleak House* in the Context of 1851" shows that a sustained series of editorials and news reports in *The Times* on the injustices of Chancery preceded both Dickens's novel and the Chancery Reform Act passed that year. Symbolic revolution is a broad social and cultural process, rather than a matter of executive *fiat* or poetic creation: "the will to transform the world by transforming the words for naming it, by producing new categories of perception and judgment ... can only succeed if ... they announce what is in the process of developing" (Bourdieu, "Force," 839). While this stricture applies to literature as well as to law, there are greater rewards for originality, and formal spaces for critique within the literary field in genres such as satire and comedy, whereas the doctrine of precedent, which was further entrenched in the nineteenth century retards innovation in the legal field (*London Street Tramways*). For this reason, Leckie

concludes that "law could not likely effect its revolutions without the literary and [a]esthetic 'revolutions' to which it is inextricably wedded" (Leckie 131).

This argument sheds interesting light on the representation of law in *Bleak House*. As a text promoting symbolic revolution, this novel emphatically sees the law as a realm that is "Dedlocked" against change. J. Hillis Miller in his 2001 article on *Bleak House* notes the novel's interest in legal speech acts: "Everywhere one turns ... one finds people preparing and signing documents, making promises, swearing oaths [...], bearing witness, certifying that a dead body really is dead," and others (Miller 55). While representing such performatives as the fabric of social life, the novel in Hillis Miller's view emphasises their lack of efficacy: Dickens has an "almost total lack of confidence that the legal system and all its speech acts, along with almost all other publicly sanctioned and attested speech acts can ever bring justice or do good in the world" (Miller 56). In the private world, the world of Esther's narrative, felicitous speech acts are performed. This is a useful contrast, but the two worlds are not entirely separate. The Wards in Jarndyce and Esther with them appear in the Lord Chancellor's chambers when the order appointing John Jarndyce as Guardian is made. This seems an effective use of the legal power of naming, which suggests that such things are possible if rare. Rather than foreclosing the possibility of symbolic transformation in the law, the novel diagnoses the causes of "Dedlock" by analysing various forms of legal discourse.

One such is Conversation Kenge's "grandiloquence" (McChrystal 410). In praising *Jarndyce v. Jarndyce* as a "Monument of Chancery practice" (33, 975), a "cause that could not exist out of this free and great country" (33), Kenge exhibits a blind professional absorption in the "masterly fictions" of the system, a *habitus* or mental habit that shapes his vision and his speech. Kenge's discourse insists on the law as a site of cultural value, and is a form of imitation: Esther tells us "he had formed himself on the model of a great lord" (35). Though satirically exaggerated, his rhetoric and his political conservatism are recognizably Burkean, and are therefore representative of a major tradition of legal speech that Peter Fitzpatrick calls "English juridical nationalism" (Fitzpatrick 114). When John Jarndyce presents Kenge with the newly-discovered will that might resolve the long case, this tradition is contrasted with the plain narrative of Jarndyce, when the latter asks: "'Did you ever know English law, or equity either, plain and to the purpose?'" (948). This question, with its implied criticism of the juridical nationalists' preference for "the flowers of rhetoric" over reasoning from evidence (Wollstonecraft 129), elicits a class put-down: "Still bent, my dear sir ... on echoing a popular prejudice?" (950) Kenge asserts his power as an insider, a member of the profession, to dismiss this challenge to his ideology.

Kenge's response to Jarndyce was echoed outside the text in the responses of some professional lawyers to Dickens. James Fitzjames Stephen, a barrister, and later a judge, published two articles in 1857. In "The Licence of Modern Novelists," in the *Edinburgh Review* he wrote:

> In every new novel he selects one or two of the *popular cries* of the day to serve as the seasoning of the dish he sets before his readers. It may be the Poor Laws, or Imprisonment for Debt, or the Court of Chancery ... his notions of law, which occupy so large a space in his books are precisely those of an attorney's clerk.... [T]he greatest of our statesmen, lawyers and philosophers

> would shrink from delivering any trenchant and unqualified opinion.... To Mr Dickens the question presents no such difficulty. (Stephen, "Licence," 107-8)

Thus the demand for specialist knowledge is accompanied by a class-based insult. In "Mr Dickens as a Politician," published in the *Saturday Review* (which had been co-founded by another barrister, Henry Maine) the insult is directed to Dickens's presumptively mass audience: "the vast majority of mankind unfortunately think little and cultivate themselves still less...the production among such readers of false impressions of the system of which they form a part - especially if the falsehood tends to render them discontented ... - cannot but be a serious evil" (Stephen, "Mr Dickens," 163). In this gradually democratising century, Stephen resented and feared the symbolic revolution implicit in Dickens's critique: "that flattering doctrine that by some means or other, the world has been turned topsy-turvy - so that all the folly and stupidity are found in the highest places, and all the good sense, moderation and ability in the lowest. ... For Parliament Mr Dickens has unlimited scorn... Nor does the law fare better. The Court of Chancery is an abomination, to be cut down root and branch" (Stephen, "Mr Dickens," 163-4). Stephen is a technocrat rather than a juridical nationalist, so prefers to leave institutions and their reform in the hands of experts: "there is much that wants reform in the Parliament, in the law and in the administration; but no one can reform wisely unless he knows what he is about; and that these institutions want reform is only half, perhaps even less than half the truth" (Stephen, "Mr Dickens," 165). As Hilary Schor has shown, Stephen's anxieties about Dickens branch out into anxieties about the nature and direction of English fiction (66-7). Deploring "the fallacy of artistic exaggeration," he condemned Dickens for having "a very active fancy and a most lachrymose and melodramatic turn of mind" (Stephen, "Mr Dickens," 165).

The modulation of literary criticism into personal attack suggests that this dispute was ultimately about cultural power. As a young barrister, not yet thirty years old, Stephen had access to esteemed periodicals in the literary field, albeit anonymously. Dickens by contrast was not to be allowed right of entry into the discursive field of the law, even by means of what Stephen in another article called "The Licence of Modern Novelists." This inequality between the two professions of literature and law was noted by George Henry Lewes in his 1847 essay, "The Condition of Authorship in England, Germany and France." Arguing that literature had attained the status of a profession, but one held in disrespect, he noted that "the author has not only to struggle against his brother authors, but also against a host of interlopers. Authors without engagements cannot ... eke out their income with a little chancery practice, or a bit of common law; but lawyers without clients can and do step into the field of literature" (Lewes 294). Though it correctly identifies literature's subordinate place in the field of power, this criticism is mitigated by the fact that cultural critics did write across a full range of topics, including the law.

Dickens mocks the legal profession's continued defence of Chancery in the Preface to the first edition of *Bleak House* in book form, when he opens the Preface by referring to an attack upon critics of Chancery made by the Vice-Chancellor. Another judge, Lord Denman, attacked the novel and defended the law in articles and subsequently in a pamphlet (Butt and Tillotson 183 n.1). Dickens had attained great power in the literary field, not just through the popularity of his novels but by publishing his own journal, in which he ran articles on topics that were the subject of

his fiction. All such articles appeared under the name of Charles Dickens as "conductor" of the journal (Pykett). His campaign against Chancery continued. In 1854, for example, he published an article "Legal and Equitable Jokes" in *Household Words*. One of these jokes was the story of an estate that was eaten up in the costs of a Chancery suit. Such instances of continuing abuse and injustice refuted Stephen's claim that "the Court of Chancery was reformed before he published *Bleak House*" (Stephen, "Mr Dickens," 165). In this struggle to control how the law – and especially Chancery – was understood, holders of real power weighed in against symbolic revolution. Lord St. Leonards, who was Chancellor when *Bleak House* commenced publication, publicly criticised the accuracy of Dickens's representation of Chancery, just as he had attacked *The Pickwick Papers* fifteen years earlier (Getzler; Gest). Sugden was an instinctive Tory, but also an accomplished Chancery lawyer. As Lord Chancellor for Ireland and then for England he presided over some excellent procedural reforms in the court. However he resolutely opposed radical rationalisation. Michael Lobban's research into the history of Chancery reform demonstrates that this technical approach, as articulated by Stephen and practised by St Leonards, dominated the reform movement after the 1830s.

The movement for change gathered momentum throughout the 1850s. A Commission appointed to enquire into Chancery reported in 1852. It concluded that there were inherent but remediable causes of delay, complication and cost in the court's procedures: "It is a matter of frequent occurrence ... to see cases encumbered with statements and counter-statements, evidence and counter-evidence, with which the parties have for years been harassing each other, although there has been throughout no substantial dispute as to the facts..." (*First Report* 135-6). Acting on this report St Leonards and his successors instituted a series of Chancery Reform Acts, producing such reforms as the standardisation of court procedures to ensure substantive issues were adjudicated by means of a more summary process, and to authorise Chancery to decide on questions of law as well as equity that came before it, and common law courts to decide equitable issues. In 1860 the method of taking evidence in writing by transcribing formal questions and answers was reformed, a change first suggested in the reign of Henry VIII (Kerly 281ff; Holdsworth 114-5).

By contrast, Dickens adopted what Lobban would call a "political" approach to Chancery reform. He and others saw the court as embodying archaic political attitudes and privileges. Lobban notes that "for many professional reformers in the period from 1830 to 1852, the Chancery's main fault was that it still functioned like an ancien régime institution and was riddled with 'Old Corruption'" (Lobban, "Preparing: Part One," 389). Chief among their complaints were the substantive issues of delay and expense that are central to the Chancery discourse in *Bleak House*. Lobban shows that Chancery officials derived their personal income from court fees rather than salaries, a system that promoted the corrupt expansion of court procedure. Dickens avoids such realist detail about the inside workings of the court (Pittock). Instead he displaces his critique of "Old Corruption" onto the nepotistic political aristocracy that meets at Chesney Wold. Sir Leicester's antediluvian rhetoric is accompanied by the dripping of rain and a "wintry wind that ... shakes a shower from the trees near the deserted house, as if all the cousins had been changed into leaves," a landscape that recalls the symbolism of Shelley's "Ode to the West Wind" (457). Dickens portrays this class as confusing its own interests with those of the institutions it governs. In Chapter 53 Sir Leicester refers to the division of labour in the state: "'it

does not become us, who assist in making the laws, to impede or interfere with those who carry them into execution. Or ... who vindicate their outraged majesty'" (810). Inspector Bucket is the ostensible subject of this lofty disquisition, but he acts like a private detective retained by Sir Leicester. To conclude this interview, Sir Leicester "majestically interposes ... with a wave of his hand," a detail that metonymically associates him with the "outraged majesty" of the law (811). This personification projects the speaker's own feelings onto the institution, indicating his *ancien-régime* assumption that the public interest and his own are identical.

To further this broad, political reform of Chancery, Dickens developed alliances with reforming lawyers such as County Court Judge Graham Willmore, his source for "Legal and Equitable Jokes," and William Challiner who wrote to him with further cases after reading the first number of *Bleak House*, providing details that Dickens included in the novel (Butt and Tillotson). The intertextual dialogue also worked in the other direction, with *Bleak House* being quoted by law reformers. It is in this context that Caroline Norton's choice of a passage from *Bleak House* as the epigraph to her pamphlet *English Laws for Women* in 1854 is interesting. "It won't do to have TRUTH and JUSTICE; we must have LAW and LAWYERS" (Norton 1). This is an edited and enhanced version of John Jarndyce's conversation with the imprisoned Trooper George: "'But the mere truth won't do ... You must have a lawyer'" (795). At first sight this is an atypical quotation from the novel, running counter to its strong criticism of the profession. However, in the context of symbolic revolution as a process that occurs as much extra-textually as within the text, it summarised Norton's enlistment of advocates as well as her own pen, and it signalled Dickens's own links with lawyers. It is also indicative of the measure of cultural authority that Dickens's novel had achieved in reformist segments of the social and political fields, that it should be "taken as the text" of Norton's plea for legal change. Overall, *Jarndyce v. Jarndyce* became a reference point for criticisms of Chancery. The long-running *Jennens* case, sometimes taken as a source for Dickens, was in fact described as "threaten[ing] to be as interminable as *Jarndyce v. Jarndyce*" in the *Gentlemen's Magazine* in 1852 (Polden 235). Four years later, William Carpenter, a reforming journalist, published a pamphlet entitled *A 'Bleak House' Narrative of Real Life*, about an Irish Chancery case (Lobban, "Preparing: Part Two," 565).

Pierre Bourdieu reminds us not to idealise or over-value the potential for political change to be generated from the cultural field, commenting astutely that "the symbolic revolution is doomed, most of the time, to remain confined to the symbolic domain" (Bourdieu, "Intellectual," 149). The kinds of changes brought about in Chancery that I have discussed in the later stages of this paper left intact many of the underlying ideologies of juridical nationalism and satisfaction with formal rather than substantive justice attacked in *Bleak House*. An ironic postscript to Lord St Leonards' strictures on Dickens occurred when he died in 1875, and his last will could not be located. His estate was placed in Chancery while a dispute between his heir and other family members was resolved. In a radical decision that he himself would probably not have made, the court ruled that the contents of the will could be proved by oral evidence from the daughter who acted as his amanuensis - a case of Equity being willing to help its own, perhaps (*Sugden v. St Leonards*). Overall, the scope and scale of the critique of English law mounted through Dickens's experiments with symbol, point of view and discourse far exceeded the reforms that were achieved. It is probably for this reason that *Bleak House* continues to attract readers interested in the

intersection of law and literature, for its intimation that new forms of legal creativity are still needed.

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